

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

3215349 .1

denies all remaining allegations set forth in paragraph 2 of the Amended Complaint which are not expressly admitted herein.

3. Paragraph 3 of the Amended Complaint is not directed against this defendant.

4. Paragraph 4 of the Amended Complaint is not directed against this defendant.

5. Answering paragraph 5 of the Amended Complaint, Edw. C. Levy Co. admits that NSBS entered into an agreement with Butler Mill Service Company dba Fulton Mill Service Company to process slag on NSBS's steel mill property in Fulton County, Ohio, that in 2010 Butler Mill Service Company changed its name to Levy Environmental Services Company, which has continued to operate Fulton Mill Service Company. Edw. C. Levy Co. denies any allegations contained in paragraph 5 of the Amended Complaint that are not expressly admitted herein.

6. Paragraph 6 of the Amended Complaint is not directed against this defendant.

7. Answering paragraph 7 of the Amended Complaint, Edw. C. Levy Co. denies that defendant North Star BlueScope Steel is the owner of the subject aggregate/slag processing plant on its property, and specifically states that Levy Environmental Services Company dba Fulton Mill Service Company is the owner of the slag processing plant.

8. Answering paragraph 8 of the Amended Complaint, Edw. C. Levy Co. states that it designed and constructed a slag processing plant on defendant NSBS's premises in 1996. Edw. C. Levy Co. denies any allegations contained in paragraph 8 of the Amended Complaint that are not expressly admitted herein.

9. Paragraph 9 of the Amended Complaint is not directed against this defendant.

10. Paragraph 10 of the Amended Complaint is not directed against this defendant.

11. Paragraph 11 of the Amended Complaint is not directed against this defendant.

12. Edw. C. Levy Co. admits the allegations contained in paragraph 12 of the Amended Complaint.

13. Edw. C. Levy Co. denies the allegations contained in paragraph 13 of the Amended Complaint.

14. Paragraph 14 of the Amended Complaint is not directed against this defendant.

15. Edw. C. Levy Co. denies the allegations contained in paragraph 15 of the Amended Complaint.

16. Edw. C. Levy Co. repleads its admissions and denials set forth above as if fully rewritten herein.

17. Edw. C. Levy Co. denies the allegations contained in paragraph 17 of the Amended Complaint.

18. Edw. C. Levy Co. admits that Theodore Lucio fell to the ground while working at the slag plant on February 25, 2013, during the course and scope of his employment with Levy Environmental Services Company dba Fulton Mill Service Company. Edw. C. Levy Co. denies all remaining allegations contained in paragraph 18 of the Amended Complaint.

19. Edw. C. Levy Co. denies the allegations contained in paragraph 19 of the Amended Complaint.

20. Edw. C. Levy Co. denies the allegations contained in paragraph 20 of the Amended Complaint.

21. Edw. C. Levy Co. denies the allegations contained in paragraph 21 of the Amended Complaint.

22. Edw. C. Levy Co. repleads its admissions and denials set forth above as if fully rewritten herein.

23. Answering paragraph 23 of the Amended Complaint, Edw. C. Levy Co. repleads that Wayne Engineering was a dba of Edw. C. Levy Co. and that it constructed the subject slag processing plant for Butler Mill Service Company dba Fulton Mill Service Company, which is now known as Levy Environmental Services Company dba Fulton Mill Service Company.

24. Edw. C. Levy Co. admits that it designed and built the subject slag processing plant in 1996.

25. Edw. C. Levy Co. denies the allegations contained in paragraph 25 of the Amended Complaint.

26. Edw. C. Levy Co. denies the allegations contained in paragraph 26 of the Amended Complaint.

27. Edw. C. Levy Co. denies the allegations contained in paragraph 27 of the Amended Complaint.

28. Edw. C. Levy Co. denies the allegations contained in paragraph 28 of the Amended Complaint.

29. Edw. C. Levy Co. denies the allegations contained in paragraph 29 of the Amended Complaint.

30. Edw. C. Levy Co. denies the allegations contained in paragraph 30 of the Amended Complaint.

31. Edw. C. Levy Co. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Amended Complaint and therefore denies same.

32. Edw. C. Levy Co. denies the allegations contained in paragraph 32 of the Amended Complaint.

33. Edw. C. Levy Co. denies the allegations contained in paragraph 33 of the Amended Complaint.

34. Edw. C. Levy Co. denies the allegations contained in paragraph 34 of the Amended Complaint.

35. Edw. C. Levy Co. denies the allegations contained in paragraph 35 of the Amended Complaint.

36. Edw. C. Levy Co. repleads its admissions and denials set forth above as if fully rewritten herein.

37. Paragraph 37 of the Amended Complaint is not directed against this defendant.

38. Paragraph 38 of the Amended Complaint is not directed against this defendant.

39. Paragraph 39 of the Amended Complaint is not directed against this defendant.

40. Edw. C. Levy Co. repleads its admissions and denials set forth above as if fully rewritten herein.

41. Edw. C. Levy Co. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Amended Complaint and therefore denies same.

42. Edw. C. Levy Co. repleads its admissions and denials set forth above as if fully rewritten herein.

43. Edw. C. Levy Co. denies the allegations contained in paragraph 43 of the Amended Complaint.

44. Edw. C. Levy Co. denies the allegations contained in paragraph 44 of the Amended Complaint.

45. Edw. C. Levy Co. denies the allegations contained in paragraph 45 of the Amended Complaint.

46. Edw. C. Levy Co. denies the allegations contained in paragraph 46 of the Amended Complaint.

47. Edw. C. Levy Co. denies the allegations contained in paragraph 47 of the Amended Complaint.

SECOND DEFENSE

48. Plaintiffs have failed to state a claim upon which relief can be granted against Edw. C. Levy Co.

THIRD DEFENSE

49. Plaintiffs' claims are barred by the statutes of repose set forth in Ohio Revised Code §§2305.10(C) and/or 2305.131.

FOURTH DEFENSE

50. Plaintiff was negligent and his negligence caused or contributed to cause any damages claimed herein.

FIFTH DEFENSE

51. Plaintiff assumed the risk of any damages or injuries claimed herein.

SIXTH DEFENSE

52. Plaintiffs' non-economic damages are limited by Ohio Revised Code §2315.18.

SEVENTH DEFENSE

53. This defendant's liability for damages, if any, may be limited to its proportionate share by Ohio Revised Code §§2307.22 and 2307.23.

EIGHTH DEFENSE

54. To the extent there is a settlement with another person or entity for the injuries claimed in this action, plaintiff's recovery against this defendant, if any, must be reduced by the set-off provisions contained in Ohio Revised Code §2307.28 and/or by common law.

NINTH DEFENSE

55. Plaintiff may have failed to mitigate his damages.

TENTH DEFENSE

56. Plaintiff's injuries were the result of his own failure to follow fall protection safety instructions provided to him by his employer.

ELEVENTH DEFENSE

57. Edw. C. Levy Co. is immune from plaintiffs' claims pursuant to Ohio Rev. Code Ann. § 4123.74 and Ohio Const. Art. II, § 35.

TWELFTH DEFENSE

58. Edw. C. Levy Co. reserves the right to add additional affirmative defenses as discovery proceeds.

WHEREFORE, Edw. C. Levy Co. prays that the Amended Complaint be dismissed and that it recover its costs herein incurred.

EASTMAN & SMITH LTD.

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PROOF OF SERVICE

I hereby certify that on 4th day of September 2015, a copy of the foregoing **Separate Answer of Edw. C. Levy Co. to First Amended Complaint** was filed electronically with the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

/s/ Lynn Vuketich Luther
Attorney for Defendant
Edw. C. Levy Co.